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Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

HONGJUN YUAN; and MEIMEI FU,)	No. C 07-3750 JL
)	
Plaintiffs,)	
)	
v.)	
)	
MICHAEL CHERTOFF, Secretary,)	ANSWER
Department of Homeland Security;)	
ROBERT S. MUELLER, Director of the)	
Federal Bureau of Investigation,)	
)	
Defendants.)	

The Defendants hereby submit their answer to Plaintiffs' Complaint for Writ in the Nature of Mandamus.

1. Paragraph One consists of Plaintiffs' characterization of this action for which no answer is necessary; however, to the extent a response is deemed to be required, the Defendants deny that they have improperly withheld action on Plaintiffs' applications to their detriment.

PARTIES

2. Defendants admit the allegations in Paragraph Two.
3. Defendants admit the allegations in Paragraph Three.
4. Defendants admit the first sentence and deny the second sentence in Paragraph Four.

JURISDICTION

5. Paragraph Five consists of Plaintiffs' allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph Five.

VENUE

6. Paragraph Six consists of Plaintiffs' allegations regarding venue, to which no responsive pleading is required. Defendants aver that unless specifically provided by law, aliens have no residence in the United States for venue purposes. To the extent a response is required, Defendants deny that venue is proper in this district.

EXHAUSTION OF REMEDIES

7. Defendants deny that Plaintiffs exhausted their administrative remedies.

CAUSE OF ACTION

8. Defendants admit the allegations in Paragraph Eight.

9. Defendants admit the allegations in Paragraph Twelve with the exception that Plaintiffs' cases were transferred to the Nebraska Service Center on March 2, 2007.

10. Defendants deny the allegations in Paragraph Ten.

11. Defendants deny the allegations in Paragraph Eleven.

12. Defendants deny the allegations in Paragraph Twelve.

PRAYER

13. Paragraph Thirteen consists of Plaintiffs' prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified are hereby denied. For further and separate answer, Defendants allege as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

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SECOND DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiffs.

FOURTH DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH DEFENSE

The Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiffs, dismissing Plaintiffs' Complaint with prejudice; that Plaintiffs take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: September 24, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/
MELANIE L. PROCTOR
Assistant United States Attorney
Attorneys for Defendants